former. *Telegraph Co.* v. *Speight* (1920), — Sup. Ct. Rep. —. In *Watson* v. *Telegraph Co.* (N C., 1919), 101 S. E. 81, the court held that a message like that in the instant case was not interstate, where the mode of transmission was not the usual and customary one, but was adopted to evade state laws. As a curb on fraud this view may be desirable. As a practical matter we must consider facts, not motives. *Telegraph Co.* v. *Mahone,* 120 Va. 422. The fact must be tested by the actual transaction, and the transmission of a message through two states is actually interstate commerce. *Kirkmeyer* v. *State of Kansas,* 236 U. S. 568, 59 L. Ed. 721. From the beginning state courts, jealous of the power of their own commonwealths, have naturally leaned towards the intrastate view. While the United States Supreme Court, as naturally, is inclined to enlarge the scope of federal authority. The general tendency of the last ten years has been to enlarge federal control in these fields. See in this connection 16 MICH. L. REV. 379.

TRIAL—COERCION OF JURY REVERSIBLE ERROR.—In a prosecution for violation of the Prohibition Act, the jury reported that they were unable to agree. The court instructed the jurymen that, should they be unable to arrive at a verdict, it would be necessary for the court to discharge them for the remainder of the term. On appeal of the defendant from the conviction, it was *held,* that such an instruction made for the purpose of coercing a jury is reversible error. *People* v. *Strzempkowski* (Mich., 1920), 178 N. W. 771.

The court may properly urge upon the jury the necessity of their coming to a verdict. *Pierce* v. *Rehfuss,* 35 Mich. 53; *White* v. *Calder,* 35 N. Y. 183. As a reason for this necessity, the court may advance the expense to the state of a retrial, *Kelly et al.* v. *Doremus et al.,* 75 Mich. 147 (but see *Railway Co.* v. *Bazber* (Tex.), 209 S. W. 394, 17 MICH. L. REV. 607); or the expense to the parties, *Pierce* v. *Rehfuss, supra;* or the length of time expended on the case at the present trial, *Shely* v. *Shely,* 20 Ky. Law Rep. 1021; *Knickerbocker Ice Co.* v. *Penn. R. Co.,* 253 Pa. 54. But it is not proper to coerce the jury to arrive at a verdict, either by threatening to keep them without food, *Hancock* v. *Elam,* 62 Tenn. 33; or suggesting the incompetence of the minority of the jury, *Twiss* v. *Lehigh Valley Ry. Co.,* 61 N. Y. App. Div. 286; or by threat to discharge. *People* v. *Strzempkowski, supra.* The line of demarcation seems to be between using reasonable means to urge the jury to arrive at a verdict, *White* v. *Fulton,* 68 Ga. 511, and threats for the purpose of coercing them, *Hancock* v. *Elam, supra.* However, it is possible that the court, in the principal case, misconceived the anxiety which a jury might have on being threatened with discharge for the remainder of the term.

TROVER AND CONVERSION—MEASURE OF DAMAGES FOR CONVERSION OF TIMBER.—Trees were unlawfully, but not willfully, cut, and the cut timber converted. *Held,* the measure of recovery in trover is the value of the timber at the time and place of conversion, with interest, with no deductions for labor performed upon the timber anterior to the consummation of the conversion by actual removal. *West Yellow Pine Co.* v. *Stephens* (Fla., 1920), 86 So. 241.

The court here announces the measure of damages in cases of the conversion of realty as first pronounced in *Martin* v. *Porter,* 5 M. & W. 352, and followed in *Morgan* v. *Powell,* 3 Q. B. 278. This rule, though favored in cases where the taking was willful or fraudulent, was held inapplicable where the defendant acted inadvertently and in the honest belief that he had a right to do what he did. Where the taker acted in good faith, it was held more reasonable that the "estimate should be the fair value of the property *in situ,* before severance." *Wood* v. *Morewood,* 3 Q. B. 440, note. This distinction between willful and innocent taking was followed in *Jegon* v. *Vivian,* L. R 3, Ch. 742, and in *Livingstone* v. *Rawyards Coal Co.,* 5 App. Cas. 39. In America, *Forsyth* v. *Wells,* 41 Pa. 291, established the doctrine that where the defendant acted in good faith he should be allowed the value of his labor and the measure of damages should be the value of the property before the wrongdoing began. The trend of authority shows that American courts have taken note of the injustice and oppression of the rule of *Martin* v. *Porter, supra,* and of the principal case, where the taking is not willful, but innocent. The strict rule may cause trespassers to be more careful, yet it gives the injured party more than just compensation for the injury he has suffered, and fails to distinguish between fraud and mere mistake. SEDGWICK, DAMAGES [9 Ed.], Sec. 503.

TRUSTS—CONSTRUCTIVE TRUSTS—CONVEYANCE WITH ORAL AGREEMENT TO RECONVEY.—S and his mother, the defendant, owned undivided parts of an estate. S conveyed his interest to D to enable her to raise money by mortgage, on an oral agreement to reconvey when the mortgage should be paid. D sold the property after the death of S, repudiating the oral agreement, and P, the wife and heir of S, brings action to enforce a trust by implication, arising from the fiduciary relation and the repudiation. *Held,* that a trust by implication, excepted from the Statute of Frauds, arises. *Silvers* v. *Howard et al.* (Kan., 1920), 190 Pac. 1.

The court says that it is going too far to say that, in the absence of fraud, a trust can be raised wherever it is against equity to retain property, but finds "constructive fraud" in the abuse of the fiduciary relation. By the weight of authority in America, the parol evidence rule and the statute of frauds form insurmountable objections to enforcing a constructive trust in the above situation, or where grantee agrees to hold in trust, *Titcomb* v. *Morrill,* 10 Allen 15, unless there is dishonest intention at the time of conveyance, *Patton* v. *Beecher,* 62 Ala. 579; *Revel* v. *Albert,* 162 N. W. 595; or a special fiduciary relation, *Biggins* v. *Biggins,* 133 Ill. 211; see *Bullenkamp* v. *Bullenkamp,* 43 N. Y. App. 510. But there should be no difference between dishonest intention at the time of conveyance and after conveyance; see *Gibben* v. *Taylor,* 139 Ind. 573. The constructive trust arises not because of the parol agreement but because of the grantee being unjustly enriched thereby. The English cases recognize this. *Hutchins* v. *Lee,* 1 Atk. 447; *Davies v. Otty,* 35 Beav. 208; *Haigh* v. *Kaye,* L. R. 7 Ch. App. 469; *Booth* v. *Turle,* L. R. 16 Equity Cas. 182; *Peacock* v. *Nelson,* 50 Mo. 256 (*semble*).